## VARIA AND ANOTHER v. PUBLIC PROSECUTOR.

[Appellate Criminal Jurisdiction (Pretheroe, J.) September 3, 1947]

*Penal Code, Section 411 — Dishonestly retaining stolen property — Proof of possession essential.*

In this case the two appellants were convicted of dishonestly retaining flour knowing the same to be stolen property contrary to section 411 of the Penal Code. The two appellants were found on the deck of a tongkang in which the Police found 13 bags of flour in circumstances which indicated that they were intended to be concealed. Both appellants were members of the crew of the tongkang and it was proved that it was customary, when the tongkang was in the river unladen, for members of the crew to sleep ashore at their respective homes.

**Held**, that in order to support a conviction under section 411 of the Penal Code proof of possession is essential and as there was no such proof in this case the convictions must be quashed.

CRIMINAL APPEAL.

*D. S. Marshall* for the Appellants.

*J. C. N. Kilner* (Crown Counsel) for the Respondent.

**Pretheroe, J.** : — The two appellants were convicted of dishonestly retaining 1,366 katties of flour knowing the same to be stolen property contrary to section 411 of the Penal Code. Each appellant was sentenced to three months rigorous imprisonment and the flour was ordered to be confiscated. Each appellant appealed against both his conviction and sentence.

Briefly stated the facts were as follows :— At 9 p.m. on the 11th April last a detective on duty at the waterfront observed two Indians throwing a bag of flour into the river from tongkong No. 6339. The detective boarded the tongkang and the two Indians fled by jumping from tongkang to tongkang. Another constable gave chase but the Indians escaped and neither the detective nor the constable could identify either of the Indians. Shortly after this O.C.P.D. Malacca accompanied by some members of the Police Force boarded tongkang 6338. There they found the two appellants lying on the deck and search of that tongkang revealed 13 bags of flour in circumstances which indicated that they were intended to be concealed. No person other than the two appellants was aboard the tongkang at the time the Police arrived. Both appellant are members of the crew of that tongkang and, when the tongkang is in the river unladen, it was proved that it is customary for the members of the crew to sleep ashore at their respective homes.

As I have taken a certain view of this appeal it is only necessary for me to consider the second ground of appeal viz. that there was no proof that the appellants were in possession of the flour. As in normal circumstances members of the crew of a vessel do not have possession of any cargo in that vessel it was clearly necessary to prove that the circumstances in this case were not normal and that the two appellants had in fact possession of the flour. It was stated by the head Indian of the tongkang that there was no reason why members of the crew should not sleep on the tongkang if they so desired so the mere presence of the appellants that night was unusual but not unauthorised. There is no evidence whatever to show that the appellants are the same persons as the Indians the detective saw throwing a bag of flour into the river and I can find no evidence to indicate that the appellants were in any way connected with the flour in tongkang No. 6338. The presence of the appellants on that tongkang that night was highly suspicious but in order to support a conviction under the section charged proof of possession is essential. That proof being lacking I allow both appeals and quash both convictions.

As the appellants disclaimed any interest in the flour the order regarding the forfeiture of the flour is confirmed and the Magistrate will make the necessary order under section 441 (2).

*Appeal Allowed.*

---

## HOH KEH PENG v. PUBLIC PROSECUTOR.

[Appellate Criminal Jurisdiction (Willan, C.J., Malayan Union, Jobling & Spenser Wilkinson, J.J.) July 22, 1947]

*Penal Code, Section 473 — Possession of counterfeit seal with intent to commit forgery — Onus on prosecution of proving intention — Mere possession does not constitute the offence — Procedure at close of prosecution case — Criminal Procedure Code S. 180.*

In this case the appellant had been convicted under Section 483 of the Penal Code with being in possession of a counterfeit seal with the intention of using it for the purpose of committing forgery. The facts were that a rubber stamp being a close imitation of the rubber stamps used by the Assistant Food Controller, Perak, when signing certain documents, was found in accused's basket in a room in the Central Hotel at Ipoh. The appellant appealed to the Court of Appeal against his conviction.

**Held**, that the onus is on the prosecution to prove the intention to use the seal for the purposes of forgery and that it is not sufficient for them to prove mere possession of the seal without any proof of such intention.

*Cases referred to :—*

(1) *Queen v. Kisto Soonder Deb* 2 W.R. (Cr.) 5.

(2) *Queen v. Goluck Chunder and another* 13 W.R. (Cr.) 16.

*CRIMINAL APPEAL.*

*M. S. Mahendran* for the appellant.

*M. G. Neal* (Crown Counsel) for the Respondent.